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ROAD LAWS, BOND ISSUES AND TAXATION.

The wide-spread interest which has been awakened in the subject of Good Roads makes it highly important that we examine and consider what laws we have on that subject and what we should have. The state has a general road law. By Section 44 of the same, it is provided that it shall not be construed as repealing or altering the special road law of any county having one, nor shall it be taken as applying to such counties, but, so far as the general law is not inconsistent with the special law, the general law shall apply to such counties.

Many of the counties of the Commonwealth have special road laws for the working of the roads generally, also, there have been many special acts authorizing the issuing of bonds by counties and magisterial districts. An examination of the Acts of 1915, 1916, and 1918 shows that more than thirty of such special acts were approved which related to either the working of roads or bond issues.

It is provided by Sec. 12 of the general road law that the Board of Supervisors shall annually levy a road tax on the property, real and personal, subject to local taxation in the several districts, and not embraced within the corporate limits of any incorporated town in such county which maintains its own streets; therefore, under the general road law, no road tax can be imposed on the property within the corporate limits of such towns.

The Constitution of the state is silent on the subject of road taxation and prescribes no limit, which leaves the whole subject open to legislative action. Segregation of property took place in 1915 and it is provided by Act of March 15th, 1915, p. 138, that each incorporated town in the state which maintains its own roads free of expense to the magisterial district in which it is located or which is exempt by the express provisions of its charter from the payment of district road taxes is declared to be a distinct and separate road district within the county in which said town is situated.

By Act, approved March 17, 1916, p. 495, it is provided that, except in counties where some special road law is in conflict with the general law, the Board of Supervisors, &c. shall have

the control, supervision, management and jurisdiction, as is, or may be, hereafter provided by law, over all of the county roads, causeways, bridges, &c., provided that such jurisdiction for the purpose of establishing, altering and maintaining roads and bridges shall not extend over the territory embraced within the boundaries of any incorporated town which cares for its own streets and bridges, but it authorizes the county authorities, in their discretion, to expend a portion of the county funds within the limits of such town, not exceeding fifty per cent of the total cost of such improvements, in which event the county authorities are given the same jurisdiction over such improvements and bridges in towns as elsewhere in the county.

It is not probable that the county authorities would be willing to make such contribution or that the several town authorities within the state would consent to the county authorities exercising such jurisdiction. Again, the provisions of the special road laws of the several counties vary, but many of them have stipulations of the same character as the above.

The special road law of Loudoun County, Acts of 1916, p. 364, constitutes each Magisterial District in the county a separate road district, exclusive of the incorporated towns which maintain their own roads free of expense to the district in which they are located or which are exempt by the express provision of their charter from the payment of district road tax.

Section 6 of said act provides that the respective road boards of the several districts in their discretion may set apart and appropriate not less than one fourth or more than one half of the road funds, levied and collected in each district toward the permanent improvement of the main public roads of the respective districts or maintenance of permanently improved roads, and further provides permanent improvements shall include only the building of macadam, gravel, cement or sand clay roads, the construction of culverts, building of bridges, or the metaling, grading, draining, &c. of such roads under the direction or with the approval of the State Highway Commissioner, and such fund so set apart may be used in order to obtain the benefit of any laws passed granting state money or other aid to the county highways or in co-operation with private subscribers for such

improvements. The limit of the rate of taxation is thirty cents on the hundred dollars.

The general road law of the state, except so far as it is in conflict with the act, is to be in force in the county of Loudoun; therefore, the road law of the county is special in part and the general road law of the state, so far as not in conflict with it, applies to the county on subjects not covered by the special act, such as the issuing of county and district bonds which will be referred to later on in this article.

The Segregation Act, approved March 15, 1915, p. 120, authorizes the Board of Supervisors to levy a tax upon segregated intangible personal property of thirty cents on the hundred dollars to be used exclusively in the district for the construction and repair of roads in the district but this shall not be construed to authorize the levy of such tax against the residents of an incorporated town which maintains its own roads or which is exempt by statute or by the express provisions of its charter from the payment of district road taxes or which maintains its own roads free of expense to the district in which the town is located. This act further provides that cities shall not be prevented from levying a tax on segregated intangible personal property at not exceeding thirty cents on the hundred dollars.

It is further provided, Acts 1915, p. 146, amending Sec. 1043 of the Code, that cities may levy a tax on intangible property, segregated for state purposes of not exceeding thirty cents on the hundred dollars, and further any incorporated town which is exempt by statute or by the express provision of its charter from the payment of district road taxes or which maintains its own roads free from expense to the magisterial district in which it is located may levy a tax on the intangible property assessed to residents therein at a rate not exceeding thirty cents on the hundred dollars.

It is probable that under the charters of the several cities, there is a limitation in respect to the taxes which may be imposed on real estate and tangible personal property and it would seem that as to segregated intangible personal property the taxes which a city may impose is limited to thirty cents on the hundred dollars.

In respect to incorporated towns, under the Act of 1915, p. 138, each in terms is made a separate and distinct road district and perhaps the same thing is contained in the charters of many of the incorporated towns. In the case of Loudoun County, its special road law in terms excludes the Board of Supervisors from exercising jurisdiction over territory embraced within the corporate limits of the several towns throughout the state, prohibits them from imposing any taxes on property, tangible or intangible, or persons residing within such town as takes care of its own streets, &c., and Sec. 1043 of the Code, above referred to, also prohibits the imposition of road taxes on segregated intangibles and residents within the corporate limits of such towns. By the terms of the charters of some of the towns of Loudoun County, they are absolutely required to maintain and take care of the streets and roads and no road tax can be imposed on the property and residents therein which would be valid. The charters of some of the towns in Loudoun County provide that it shall be optional whether they maintain and take care of their streets and roads and if they do so it is provided they shall be exempt, i. e.: all the property and persons within the corporate limits of such towns shall be exempt from road tax and none can be imposed on either tangibles or intangibles.

By Act, approved Feb. 17, 1916, cities and incorporated towns were authorized, if in their judgment it will promote their material interest, to contribute funds or other aid toward the building or improvement of roads leading to them, or to the construction of bridges, or the purchase of them not beyond forty miles from their corporate limits. This was amended March 16, 1918, p. 452, and is embodied in the new Code which becomes effective Jan. 1920, (see Sec. 2016) and therefore will continue unless changed.

By Act, approved March 16, 1918, p. 569, a special tax was authorized to be levied of eight cents on the hundred dollars, three cents of which is to be applied to the construction or reconstruction of roads and projects comprised in the State Highway system. By the terms of this act the tax is to be imposed on tangibles and intangible property, also, on the shares of bank stock, &c. It is provided that said taxes shall be in addition to

all other taxes upon the property specified which are imposed or may hereafter be imposed by any statutes or acts. By a later act of the same session, approved March 20, 1918, p. 624, the act pertaining to the taxation of bank stock, trust companies, &c., was amended and it is expressly provided in this act that the tax imposed on such stocks shall not exceed one dollar and thirty-five cents on the hundred dollars of the market value of such stock "and that the said tax shall be in lieu of all other taxes whatsoever for state, county, or local purposes upon the said shares of stock."

It will be noted that taxes imposed on all intangibles and bank stocks is on their actual value. It would therefore seem that the Act of March 20th is a later act than the Act of March 16th on the subject of bank stocks, &c.; that the two acts are in conflict, and it is provided by the Act of March 20th, 1918, that all acts and all parts of acts in conflict with it are repealed. It would therefore seem, in view of what is above stated, that so far as the Act of March 16th, 1918, undertakes to impose a tax, denominated a special tax, of eight cents on the hundred dollars, three cents on the hundred dollars of which is to be applied to the construction and reconstruction of State Highway roads and projects, is proliably in conflict with the charters of many cities and towns and that many incorporated towns are taking care of and maintaining their own streets which, under the statutes above quoted, expressly exempts them from road tax. It further appears that intangibles under the statutes above quoted are not to be taxed by incorporated towns beyond thirty cents on the hundred dollars which is a tax for town purposes and not state and that by said Act of March 20th, 1918, the taxes imposed by said act are in lieu of all other taxes on the stock of banks and trust companies. A tax cannot be levied for one purpose and after it is levied and collected used for another, and, therefore, the provision in the Act of March 16th, 1918, that three eighths of the special tax levied and authorized shall be applied to State Highway roads and projects must be taken and construed in substance and in effect as none other than a road tax and is not valid so far as it applies to property within cities and towns by the terms of whose charters are exempt

from road tax or to incorporated towns which maintain their own streets and bridges.

There have been many special acts authorizing the issue of county bonds and district bonds for improved road construction in the several counties, the provisions of which while substantially alike vary in some particulars. It is perhaps unfortunate that this has been done, and in the future the whole subject should be covered by either one act or two with the provisions comprehensive and broad enough to cover all which will probably be required by counties and magisterial districts.

The general road law of the state and the special acts for the several counties do not touch on the subject of bond issues by the counties and districts but seem to relate only to what may be termed ordinary dirt roads. The issuing of county bonds for improved road or permanent road construction has been authorized for many years by acts of the Assembly which have been approved and some of the sections have been amended from time to time. By Act, approved March 17, 1916, Sections 1 and 7 were last amended and the legislation on the subject of county bonds will continue and be in force until Jan., 1920, when the new Code becomes effective. By the terms of the new Code, Chapter 89, provision is made for bond issues by both counties and magisterial districts and after Jan., 1920, this will be the sole law unless there is further legislation in respect to the issue of county bonds. However, it will be noted that this chapter 89 of the new Code, Sec. 2110 to 2122 inclusive, covers the issuing of county bonds, then follows in the same chapter, Sections 2123 and 2124, on the subject of the issuing of bonds by the magisterial districts and the two last named sections are dovetailed into and refer to a number of the sections relating to the issuing of county bonds and in effect makes those sections relating to county bonds a part of the law relating to bonds issued by magisterial districts, i. e.: these two subjects are interwoven and blended in this chapter so as to be inseparable and yet they have been already separated at least in part. The new Code is to become effective and operative Jan., 1920, and the acts of the Legislature passed after March, 1918, are to be treated and construed as amending the Code which becomes in

force as above stated. It appears that by Act of the Legislature, approved March 9, 1918, provision was made for the issuing of bonds by magisterial districts and this act, considering its date of approval, constitutes an amendment of the new Code, Sections 2123-2124, and probably repeals the two last named sections and withdraws them and severs the subject of the issuing of bonds by magisterial districts completely from the balance of the chapter relating to the issuing of county bonds, i. e.: the old law on the subject of issuing county bonds continues in force until Jan., 1920, at which date, Chapter 89 of the new Code becomes effective and covers the subject unless there is further legislation on it. It will be noted that the Act of March 9th, 1918, p. 214, undertakes to amend Sections 1, 7 and 9 of the old act. That is all which is in its title, yet as published there are twelve sections, 1 to 12 inclusive, which makes the act as published much broader than the title and makes it unconstitutional perhaps as to all sections other than 7 and 9. We thus have a curious condition in this that the existing law as to the issuing of county bonds, and Chapter 89 of the new Code controls that subject, then we have the Act of March 9th, 1918, p. 214, which is an amendment of the new Code, and amends and repeals Sections 2123 and 2124, severs the relation in that chapter of county and magisterial district bonds, breaks up the dovetail provided in it, and the Act of March 9th, 1918, partly constitutional and partly unconstitutional, is the law in force now and will be the law in force after Jan., 1920, unless there is further legislation on the subject.

The question is suggested as to what shall be done to meet this. Our answer is there should be a new act of legislation covering the entire subject of the issuing of bonds by counties and magisterial districts and this would operate as an amendment and repeal of Chapter 89 of the new Code and be the entire law in force when enacted after the new Code becomes effective. Any such law should carefully prescribe who shall vote and especially whether those in incorporated towns shall vote, on what property taxes should be imposed in the county and district and not open the door to questions of construction growing out of the differences in the language of Sec. 2117 and

2123 of Chapter 89 of the new Code, and it should also be made plain that taxes imposed for permanent roads, &c. whether state, county or district, should be levied, extended on the tax bill as a separate and distinct item, and when collected, this fund should clearly be applied to the discharge of interest and the sinking fund. The bonds should be serial in maturity, so they would have to be paid as they mature and if not in this form they should provide that they might be called for payment before maturity, i. e.: be subject to call and the taxes collected be applied to their discharge which would be the best use which could possibly be made of what might be denominated a sinking fund, rather than invest the sinking fund until the maturity of the bond and then perhaps lose it which is frequently done or fail to provide a sinking fund which is frequently the case together with other provisions of an alternate character which would probably meet any possible demand of the different localities.

In connection with the enactment of a new law on the subject of county and district bonds as a substitute for Chapter 89 of the new Code and all existing laws, it is perhaps well to consider certain cases which have been decided by our Supreme Court.

The case of *Eggborn v. Supervisors of Culpeper Co.*, 109 Va. 95 involved the validity of an election in Catalpa District, Culpeper County, and a proposed issue of sixty thousand dollars of bonds for the purpose of permanently improving the roads of said district which contained the county seat. The proceeding was had under the Act of March 1906 and decided in January 1909. The Circuit Court held the proposed bonds were valid but the Supreme Court reversed this decision and held them invalid.

The charter of the town of Culpeper exempted persons and property within the town from taxation for road purposes as long as the town, at its own expense, keeps its streets in order, a requirement with which it had long complied and was then doing. The order of the court under which the election was held provided that residents of the town and property located within its corporate limits should be held liable to taxation for

the payment of the bonds, should they be issued, notwithstanding the charter provisions above referred to. It also provided and directed that a separate pole be opened to take the sense of the qualified voters of the town on the question directed to be submitted. It was afterwards agreed between the council of the town and the supervisors that the council would waive the exemption from taxation contained in the charter, provided the supervisors would devote a part of the proceeds of the bond issue to macadamizing certain streets. The order of the court directed that a separate pole be opened for the voters of the town but this was not complied with and only one ballot box was kept in which all ballots were deposited at that precinct whether the voter resided within or without the corporate limits.

It was contended that the exemption from taxation contained in the charter of the town must be taken and construed with reference to the ordinary district road tax existing at the date of the charter for ordinary road purposes and did not apply to the establishing of permanent public roads contemplated by the Act of March 1906 under which the proceeding was had. The Court rejected this argument and said in the opinion that the argument lost its cogency because Sec. 19 of the act provided that no voter should be allowed to vote at the election who resides and is a voter in a town exempt from road taxes, which provision the Circuit Court disregarded in directing the election and requiring a separate pole to be taken of the voters within and without the town. The Court further held: "nor can we agree to the proposition that the bond issue is valid though the property of the town be held to be exempt."

The opinion contains a note of the court that there is a question involving the constitutionality of the act which was not raised in the case and upon which it expressed no opinion except to state it was sufficiently serious that attention should be called to it. The constitutional question suggested is whether the road law of 1906, which provided that a tax should be levied on all the property liable to state taxes in the district to pay interest, &c., did not violate Sec. 6 of the Bill of Rights. This decision speaks for itself and can be read by those interested with profit.

Moss v. County of Tazwell, 112 Va. p. 878, decided Nov.,

1911, involved certain questions in respect to the validity of the bonds proposed to be issued by the Supervisors. A party had purchased some of the bonds and refused to take them and suit was brought against him. A vote was had in all the districts of the county and the bonds proposed to be issued were county bonds as distinguished from magisterial district bonds. The proceeds thereof were to be apportioned among the several districts of the county in accordance with the provisions of the act. The court sustained the validity of the proposed bond issue but no question seems to have been raised or decided in the above case in respect to the liability of property and persons within incorporated towns to taxation, if any there were in said county whose charters in terms provided exemption from road tax or provided that if any of the towns within the county maintained their own roads and streets they should be exempt from road tax: The case was decided prior to segregation in 1915 and the several acts of the Assembly, above referred to, bearing on the subject of taxation of persons and property within incorporated towns for road purposes. It thus appears that no question of taxation was involved or decided in that case or exemption of persons or property from taxation.

In *Board of Supervisors Botetourt Co. v. Cahoon*, 121 Va. 768, decided Nov., 1917, it appeared that the Supervisors refused to issue the bonds voted because they fell far short in amount of what was necessary to construct the proposed road because of mistakes in the estimate of what it would cost. Parties interested applied for a mandamus to compel the supervisors to issue the bonds. The lower court ordered them to be issued but upon an appeal by the supervisors to the Supreme Court, their action was sustained and the Circuit Court was reversed.

This case arose under a special act of the Legislature, and no question was involved in the case in respect to taxation of persons or property within the incorporated limits of towns within the county which maintained their own streets or whose charters contained provisions of exemption from taxation if they did so.

It would seem to the writer that there is a strong analogy be-

tween the subject of permanent road construction and our school system. There should be a substantial state fund in each case, but only a limited proportion of their cost should be borne out of the state revenues. They are largely local questions, and their expense should be a local burden in the main, the county doing much more than the state, and the different districts, each for itself, should do more than the county, and they have been doing more for many years in school matters, and have been bearing and are now bearing, in many districts of many counties, all the burdens of road construction and maintenance for ordinary roads.

Again, there is a greatly increased use and a much more enlarged one by the people of cities and towns of roads than formerly. The horse and old time vehicle has been supplanted in a great measure by the automobile and truck, which go long distances within a short time as compared with what was done a few years ago. The demand for permanent good roads by residents of cities and towns has recently greatly increased, and such roads are desired by them as well as the people residing in the country. It, therefore, would seem just and reasonable that the tangible property of all should bear the burden of permanent improved roads. This sentiment has been given expression in the Act of Assembly, approved March 16, 1918, p. 452, authorizing incorporated cities and towns to contribute to the building or improvement of public roads and bridges within forty miles of their corporate limits, but it is left entirely optional with them whether they do so.

There is no obligation on them to do so as a matter of law, and this door should not be left open to the will and pleasure of the corporate authorities of the cities and towns.

It is provided by Sec. 117 of the Constitution now in force as follows: "Each of the cities and towns of the state, having at the time of the adoption of this constitution a municipal charter, may retain the same, except so far as it may be repealed or amended by the General Assembly; provided, that every such charter is hereby amended so as to conform to all the provisions, restrictions, limitations and powers set forth in this article, or otherwise provided in this constitution."

Charters of cities and towns in existence at the time the Constitution was adopted and those since granted are all subject to amendment, modification and even repeal, and the above section of the Constitution shows that their charters were amended to conform to the Constitution.

Again by the Act, approved March 15th, 1915, p. 138, all the incorporated towns of the state by one act had their charters virtually amended so as to make them a separate road district if they maintain their own roads free of expense to the magisterial district in which they are located or are exempt by the express provisions of their charter from the payment of road taxes.

To meet existing conditions the suggestion is made that it would be possible by a concise, general act, in effect, to amend the charters of the several cities and towns so that notwithstanding their existing provisions, all the tangible property within the corporate limits of such cities and towns would be made the subject of taxation to raise revenue to pay interest and provide a sinking fund for bonds which might be issued for permanent road construction. What constitutes a permanent road should be defined by law in no uncertain terms so as to meet the principles of the Culpeper case. They should be distinctly distinguished and defined as different in character from the ordinary dirt road heretofore established and used, so as to meet possible questions of what property is subject to taxation and what is exempt under the acts of the Assembly which are in force, or which may hereafter be enacted. What is embraced in this article, in respect to the Loudoun Special Road Law, is, perhaps, typical of what would be run across were the special laws relating to many other counties examined.

This article is contributed by one who stands committed to the idea that we should have permanent, improved road conditions and is anxious for them, not hostile to them. However, should they come, on the lines proposed, it will be at a heavy cost and, if bonds are issued, state or local, they will, perhaps, impose obligations on unborn generations to discharge. Wisdom and good judgment should be exercised and shown in the ex-

penditure and administration of all funds; the selections of roads and the issuing of bonds therefor, so that those who will have to carry and discharge a considerable part of the burden will appreciate what has been done and be grateful to those who did it, and not criticise it as failing to give a fair return for what was expended.

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